MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018/2019

UDL3622 – LAND LAW II

(All Sections / Groups)

9 MARCH 2019
Reading Time : 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE (3) HOURS** in which to answer the questions.

2. This Question paper consists of 6 pages with 5 Questions only.

3. This Question paper consists of 2 sections. Attempt **ONE (1)** question only in **Section A** and all **THREE (3)** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL COPY of:
   (i) National Land Code 1965 (Act 56 of 1965).

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

PART A

ANSWER ONE (1) QUESTION ONLY

QUESTION 1

"The effect of the Federal Court's decision in Bonsoom's case appears to have erased the significance of section 340(2) of the NLC that provides where there is, inter alia, forgery, the title of the proprietor that is indefeasible in section 340(1) NLC, would be rendered defeasible".

(Ainul Jaria Maidin & Ors, Principles of Malaysian Land Law, Kuala Lumpur (2008))

(a) In the light of the above statement, explain the meaning of 'bona fide purchaser for value' within the scope of Section 340 of the National Land Code 1965, to what extent the defence protects the innocent purchaser.

(19 marks)

(b) The judgment in Bonsoom's case has been criticized by many academicians as putting the interest of the original proprietor at stake. Discuss and state the current stand of the court in Malaysia on the issue.

(6 marks)

(Total: 25 marks)

QUESTION 2

Aina is a registered owner of a house in Ayer Keroh, Melaka. The house was later sold to Abu on the 1st of March 2018 through execution of a Sale and Purchase Agreement between the parties. Abu paid the full purchase price for the house and at the same time Aina executed the transfer instrument in Form 14A. The transfer has yet to be registered by the Land Office. No caveat was entered by Abu in respect of this property.

In the meantime, Ling Kup, a judgment creditor against Aina, obtained a prohibitory order from the High Court on the 30th of March 2018. The order was consequently entered on the Register Document of Title on the 2nd of April 2018.

Meanwhile on the 3rd of May 2018, Aina sold the same property to Awang, a bona fide purchaser who paid the full purchase price to Aina. Awang entered into the Sale and Purchase Agreement without checking the status of the property. However, Awang entered a private caveat against the property.

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After some times, Abu came to know that the same property has been sold to Awang. He immediately made an application from the Registrar of Titles to enter a Registrar's Caveat against the title to the property on the ground that the transaction between Aina and Awang was invalid.

By reference to the relevant authorities, discuss the legal position of the two purchasers and the judgment creditor and advise on the issue of priority among them.

(25 marks)

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PART B

ANSWER ALL THREE (3) QUESTIONS

QUESTION 3

With reference to the relevant provisions and cases, discuss the following:

(a) The meaning of 'caveatable interest' under the National Land Code 1965 with examples.

(9 marks)

(b) Explain the distinctions between a 'private caveat' and a 'lien-holder caveat' under the National Land Code 1965. Support your answer with relevant prvisions and case law.

(16 marks)

(Total: 25 marks)

QUESTION 4

Datuk Botak, a Malaysian is a rich man who owns a lot of properties. He is a registered proprietor of a double storey bungalow house ('the property') held under two titles, i.e. HS (D) No. 123, PT No. 456 and HS (M) 124, PT No. 457 respectively, both held in Bandar Melaka, Daerah Melaka Tengah, Negeri Melaka measuring total in area approximately 350 square meters. The land was gazetted as Malay Reserved Land. Datuk Botak who recently is in financial difficulties had agreed to sell the property to Ms. Erika ('purchaser') for a total purchase price of RM2 million. The purchaser's solicitors had prepared the instrument in one single transfer in Form 14A by way of handwriting in national language for the parties' execution despite that the property has two titles. To finance the purchase of the property, Ms. Erika obtained a personal loan amounting to RM1.9 million from Mr. Kah Yaa, a Chinese moneylender.

Datuk Botak is currently residing in Indonesia and just celebrated his 55th birthday last month. The purchaser's solicitors sent the Transfer Form to him for signature. Datuk Botak signed the Transfer Form by drawing a symbol of "@" in the presence of Mr. Suyautor, a Notary Public in Jakarta in a blue ballpoint pen. Mr. Suyautor also used a

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blue ballpoint pen to affix his signature at the attestation clause and dated the Transfer Form "3 November 2017".

On 4 March 2018, the purchaser's solicitors received a call from Datuk Botak's wife, Datin Diana that Botak had passed away the night before. Datin Diana, as the sole beneficiary of Botak's estate informed you that she has no knowledge of this transaction and she wished to cancel the sale and to take back the property for her own use. Ms. Erika is aware of it and instructed her solicitors to present the Transfer in Form 14A for registration at the Registry of Land Titles, Melaka immediately because she relies the case of *Teh Bee v. K Maruthamuthu* (1977) 2 MLJ 7, where the court held that under the Torrens system the registration is everything. The transfer in Form 14A was stamped at a nominal value of RM10.00. The purchaser's solicitors did not realise that all the while Mr. Botak has never paid the quit rent of the property to the relevant authority.

The Registrar at the Registry of Land Titles, Melaka has effected the registration of this Transfer form subsequently.

Meanwhile, Datin Diana has entered into a sale and purchase agreement with Mr. Soh Sad to sell a double storey factory located at Bukit Katil, Melaka ('the factory'). Mr. Soh Sad paid the full purchase price of RM450,000 only to Datin Diana's solicitors, namely Messrs. Law Yer & Rakan-rakan ('the firm') as stakeholder by way of cash. The firm deposited the said purchase price into the client's account of the firm which it maintains with Bank Kaya Berhad. Ms. Kwee, the account assistant of the firm released the full purchase price to Datin Diana subsequently but she kept the interest.

Meanwhile, Datin Diana has executed the Memorandum of Transfer in favour of Mr. Soh Sad. However, the Memorandum of Transfer in favour of Mr. Soh Sad has yet to be presented for registration at the relevant land office. Mr. Soh Sad is now arguing that Datin Diana is to hold the factory as trustee for him.

How will you advise the parties?

(Total: 25 marks)

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QUESTION 5

In September 2017, Dr. Gru, a successful businessman, bought a double-storey link house ('the house') in Durian Tunggal from the developer named Bina Sama-sama Sdn Bhd. The purchase price is RM1.2 million. Dr. Gru took a loan of RM500,000 from Banyaknya Duit Bank Bhd ('the bank') to part finance the purchase of the house. As security for the loan, Dr. Gru created a first party legal charge in favour of the bank.

In July 2018, Dr. Gru was faced with financial difficulties and he was unable to make payment of the monthly instalments to the bank. After he failed to pay the instalment for 3 consecutive month, the bank decided to commence foreclosure action against Dr. Gru's property to recover the outstanding loan sum.

Dr. Gru received a notice of demand from the bank claiming an outstanding sum of RM999,000 be paid for the loan facility granted to the house and also to one Jaguar Industries Bhd ('JIB'). Dr. Gru discovered that a person named Hensem, has forged his signature and executed the second charge document in favour of the bank to secure a loan facility granted to JIB. Dr. Gru claimed that he never executed the second instruments and hence, the second charge created was invalid.

In the Notice of Demand issued by the bank, Dr. Gru is required to remedy the breach within fourteen (14) days from the date of service of the notice. In the event Dr. Gru fails to respond to the notice as required, Toyota Bank will apply for an order for sale. In January 2019, an order for sale of the house was made by the Court. In furtherance to the Order for Sale, the house was auctioned off to Dr. Sayem during the auction for the purchase price of RM750,000.

Meanwhile, at the auction, Dr. Sayem paid the sum of RM75,000 being 10% of the auction sum. Pursuant to the proclamation of sale, Dr. Sayem has to pay the balance auction price of RM675,000 to the bank within 120 days from the date of auction, failing which the deposit sum would beforfeited towards the account of the chargor.

However, Dr. Sayem could not make payment of the balance purchase price within 120 days. He has instructed his solicitor, Ms. Apple, from Messrs. Apple Pineapple & Co, to apply to the Court to seek an extension of time to enable him to pay the balance purchase price. At the same time, Dr. Gru's eldest sister, Datin Jenna, is also interested in Dr. Gru's property. Dr. Gru and his sister have both approached the bank and informed the bank of Datin Jenna offer to purchase the house for RM850,000 by way of private treaty from Dr. Gru.

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The bank is very interested in Dr. Gru's offer as they would be able to recover their entire outstanding loan if the property is sold at RM850,000 as opposed to the sale by way of public auction for RM750,000.

Advise all the parties involved by reference to the relevant provisions of the National Land Code 1965 and decided cases.

(Total : 25 marks)

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